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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/896,616	06/30/2001	Tyler A. Lowrey	42390P11412	7217

21906 7590 06/04/2003

TROP PRUNER & HU, PC  
8554 KATY FREEWAY  
SUITE 100  
HOUSTON, TX 77024

EXAMINER

PERT, EVAN T

ART UNIT	PAPER NUMBER
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2829

DATE MAILED: 06/04/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/896,616

Applicant(s)

LOWREY, TYLER A.

Examiner

Evan T. Pert

Art Unit

2829

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: \_\_\_\_\_.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

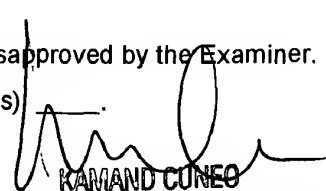
Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 7-12.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

  
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TECHNOLOGY CENTER 2800

09/896,616

Continuation of 2. NOTE:

The proposed amended claims would overcome pending prior art rejections of record based on applicant's "programmable material" being limited to a phase change material (i.e. a "programmable material" that can be reprogrammed repeatedly, which is distinct from the term "programmable material" appearing in Gordon's abstract, as applicable to antifuses). However, based on applicant's originally filed non-limiting disclosure, the scope of the term "programmable material" at the time of final rejection was reasonably the art accepted definition such as appearing verbatim in the abstract of Gordon.

While applicant's proposed amendment in view of the narrower scope of "programmable material" would overcome the pending final rejection, further search and consideration would be necessary because applicant's response with amendment raises a new issue in that the broadest reasonable scope of applicant's term "programmable material" has shifted after final, now narrower than the art accepted definition used as a basis for the final rejection (see paper no. 12, p. 3, 2nd paragraph).

Based on a preliminary consideration and search using the narrower scope of "programmable material" established in paper no. 12, applicant's proposed amended claims 7 and 12 are anticipated by Harshfield (U.S. 6,420,725), Fig. 8, wherein the dielectric 50 is "on" contact 42 (i.e. conductive material 42 is a so-called "electrical contact" and dielectric 50 is 'on' and even is 'in contact with' the contact 42), the dielectric spacers 44, 48 expose a smaller area exposed on the contact within an opening in the dielectric 50, wherein programmable material 46 comprises chalcogenide.